

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 1918 OF 2006

Milind Panditrao Pujari & anr.... Petitioner

versus

Yeshwant Bapuji Diwan & ors..... Respondent.

Shri G.S.Godbole & S.S. Kanetkar for the petitioner.
Ms. Anu Singh for Respondent no.1.
Shri Dilip Bodake for Respondent no.2.
Shri A.V.Anturkar i/b. S.B. Deshmukh for respondent
no.3.

CORAM; A.P. DESHPANDE, J.
DATED; 10TH OCTOBER, 2007

P.C.;

1. The respondent no.1 is the Plaintiff whereas the petitioners are defendant nos. 4 and 6. In the suit defendant no.5 moved an application under section 8 of the Arbitration and Conciliation Act of 1996 and prayed for referring the dispute to the sole arbitrator. The said application has been allowed by the trial court and the dispute has been referred to the sole arbitrator named in the memorandum of understanding. It is this order which is challenged by filing the present writ petition. At the outset it will not be out of place to mention that the present petitioners did not file their reply opposing the

application moved under section 8 of the Arbitration Act and the order impugned has been challenged by them.

2. The suit is filed by a settler of defendant no.1 trust seeking perpetual injunction in relation to various rights of the trust. The dispute in the suit is with regard to the rights and obligations of the parties to a memorandum of understanding dated 12-4-2005 and also Trust and Retention Account deed dated 25-4-2005. The defendant no.5 placed reliance on a clause contained in the memorandum of understanding dated 12-4-2005. The relevant clause reads as under:

"Any dispute under this agreement is subject to efforts of Reconciliation by Shri Madan Divan. He shall give his decision within 45 days of receipt of complete representation from concerned parties. The jurisdiction of this agreement is Pune city."

It was contended before the Court below by the original defendant no.5 who had moved an application under section 8 of the Arbitration and Conciliation Act that the very mention of the words "give his decision within 45 days" is indicative of the

intention of the parties to seek an arbitraral award from the arbitrator. Whereas in the submission of the learned counsel for the petitioner, the use of the words "subject to efforts of Reconciliation" and "receipt of complete representation from concerned parties" is indicative of the intention of the parties to refer the dispute for conciliation. As pointed out hereinabove the present petitioners did not file their reply to the application under section 8 and did not raise this contention before the trial court. The trial court has interpreted the above clause as an agreement for arbitration and thus referred the dispute to the sole arbitrator.

3. The learned counsel for the petitioner has tried to point out that Part III of the Act deals with conciliation and the conciliator cannot and does not render any binding decision. Thus the submission is that there does not exist any arbitration agreement and hence the trial court has erred in law in making a reference to the arbitrator. The learned counsel for the respondent has submitted that the petitioners can raise an objection about non-existence of arbitration agreement even before the arbitrator and hence no interference in exercise of writ jurisdiction is called for. It is then submitted that the view taken by the trial court is a possible view and it does not

require any interference in writ jurisdiction. Section 16 provides that the arbitral tribunal may rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the arbitration agreement. Reading of section 16 reveals that the arbitral tribunal has jurisdiction to rule on the question of existence or non-existence of a arbitration agreement and thus the petitioner can very well raise the objection about non-existence of arbitration agreement before the sole arbitrator. Perusal of the impugned order does not reveal that the trial court has committed a patent illegality. Hence, I decline to interfere with the impugned order, being of the view that no prejudice would be caused to the petitioner as he can object before the sole arbitrator that there does not exist any arbitration agreement. In the result writ petition is summarily dismissed.

4. At this stage the learned counsel for the petitioner seeks continuance of stay of proceedings on the file of arbitrator. The prayer is rejected.

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